

FILED

NOT FOR PUBLICATION

MAR 14 2006

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

HENRY ROY LOMAN,

Petitioner-Appellant,

v.

TWIN FALLS COUNTY OF, FIFTH
JUDICIAL DISTRICT,

Respondent-Appellee.

No. 04-35666

D.C. No. CV-03-00082-LMB

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Larry M. Boyle, Magistrate Judge, Presiding

Submitted March 8, 2006**

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Henry Roy Loman appeals from the district court's judgment denying his 28 U.S.C. § 2254 petition as untimely. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Loman contends that his state post-conviction petition was "properly filed"

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

for the purpose of tolling the Antiterrorism and Effective Death Penalty Act (“AEDPA”) statute of limitations. Because Loman’s state post-conviction petition was untimely, *see* Idaho Code § 19-4902(a), it was not “properly filed” and therefore, did not toll the statute of limitations. *See Pace v. DiGuglielmo*, 125 S. Ct. 1807, 1812 (2005) (“When a postconviction petition is untimely under state law, that [is] the end of the matter for purposes of [28 U.S.C.] § 2244(d)(2).”) (internal quotations omitted).

We decline to address Loman’s conclusory equitable tolling contention. *See James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994).

AFFIRMED.